

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANTONIO AGUILAR LOPEZ,  
Plaintiff,

vs.

BENTON COUNTY SHERIFF'S  
OFFICE, et al.,

Defendants.

NO. CV-12-5016-LRS

**ORDER GRANTING DEFENDANT KENNEWICK  
POLICE DEPARTMENT'S MOTION TO  
DISMISS**

**BEFORE THE COURT** is Defendant Kennewick Police Department's ("Kennewick") Motion to Dismiss, ECF No. 42, pursuant to Fed.R.Civ.P. Rule 12(b)(6)(b), filed on October 10, 2012; and Plaintiff's "Motion to Re-Instate Complaint, and Allow Leave to Amend Due to Defendant's Failure to Serve Plaintiff With Copies of Proposal/Motion to Dismiss First Amended Complaint Under Fed.R.Civ.P. 12(b)(6)," ECF No. 45, filed October 18, 2012. Although Plaintiff filed his Motion to Re-Instate Complaint, no response to Defendant Kennewick's Motion to Dismiss has been filed by Plaintiff, who is an inmate at Victorville Federal Correctional Complex in California. Local Rule 7.1(c) provides an opposing pro se party with 30 days after the date the dispositive motion was mailed to serve and file a responsive memorandum to a dispositive motion. Plaintiff was required to serve and file a

1 response no later than November 5, 2012.

2 Local Rule 7.1(h)(5) for the United States District Court,  
3 Eastern District of Washington provides:

4 A failure to timely file a memorandum of points  
5 and authorities in support of or in opposition to  
6 any motion may be considered by the Court as  
7 consent on the part of the party failing to file  
8 such memorandum to the entry of an Order adverse  
9 to the party in default.

10 Plaintiff's failure to timely file a memorandum of points and  
11 authorities in opposition to Defendant's motion is considered as  
12 consent to the entry of an order adverse to the Plaintiff.

13 Furthermore, Plaintiff First Amended Complaint alleges the Benton  
14 County Sheriff's Office "engaged in a pattern of failing to properly  
15 train its employees, and that violation resulted in the injuries  
16 afflicted by its K-9 Deputy E. Rening and its Patrol Corporal Stephen  
17 L. Caughey." ECF No. 37 at 1. Plaintiff also alleges that the  
18 "Kennewick City Police Department is equally responsible for the  
19 deprivation of the Plaintiffs [sic] Civil Rights by acting in concert  
20 with the Benton County Sherrifs [sic] Office . . ." Id. at 2. For the  
21 same reason this Court granted Benton County Sheriff's Office's Motion  
22 (ECF No. 41), this Court finds Kennewick City Police Department is  
23 not a distinct legal entity and is not a proper party to the instant  
24 action. As such, Plaintiff has failed to state a claim upon which  
25 relief can be granted. Accordingly, the Court finds that plaintiff's  
26 claims should be dismissed with prejudice.

27 **IT IS ORDERED** that:

28 1. Defendant Kennewick City Police Department's Motion to  
Dismiss, **ECF No. 42**, filed on October 5, 2012, is **GRANTED**. Plaintiff's

1 claims against Defendant Kennewick Police Department are hereby  
2 dismissed with prejudice.

3 2. Plaintiff's Motion to Re-Instate Complaint, **ECF No. 45**, is  
4 **DENIED**.

5 3. Plaintiff's Motion for Extension of Time, **ECF No. 48**, is  
6 **DENIED as MOOT**.

7 4. The file shall be **CLOSED** in this matter.

8 **IT IS SO ORDERED.** The District Court Executive is directed to  
9 enter this Order, enter judgment consistent with this Order and the  
10 Order entered on September 27, 2012 (ECF No. 41), and forward a copy  
11 to the *pro se* Plaintiff.

12 **DATED** this 28th day of November, 2012

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14 ***s/Lonny R. Suko***

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16 LONNY R. SUKO  
17 UNITED STATES DISTRICT JUDGE  
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